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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,365	03/09/2005	Zafer Malazgirt	PHDL0912-001	4950

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EXAMINER

NGUYEN, TUAN VAN

ART UNIT	PAPER NUMBER
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3731

NOTIFICATION DATE	DELIVERY MODE
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07/03/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@vclmlaw.com

Office Action Summary	Application No. 10/527,365	Applicant(s) MALAZGIRT, ZAFER	
	Examiner TUAN V. NGUYEN	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The drawings are objected to because: see Notice of Draftsperson's Patent

Claim Objection

2. Claims 1-5 are objected to because of the following informalities:
 - a. Claim 1 recites limitations of "the intraabdominal mesh plate" in paragraph a and "the double ear-piece" in paragraphs b and c. There is insufficient antecedent basis for this limitation. Appropriate correction is required.
 - b. Claim 2 recite the limitation of "it is connected to Claim 1" is unclear. Appropriate correction is required.
 - c. Claims 3-5 recite the limitation of "in connected to Claim 1" is unclear. Appropriate correction is required.
 - d. Claim 4 is objected to because of the following informalities: claim 4 recites the limitation of "Claim 4 and 3". Appropriate correction is required.

Claim Rejections - 35 USC § 101

3. Claim 1, paragraph c, recites the limitation of "it is fixated to the outer layer of the fascia" thus the claim positively claims the human body or portions thereof as part of the claimed subject matter. Appropriate correction is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. **Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Agarwal et al (US 6,241,768) in view of Eberbach (US 5,366,460) further in view of Eldridge et al (US 6,120,539).**
7. As to **claim 1**, Agarwall discloses (Figs. 1, 4, 6 and 9) a prosthetic device 1, 101 for repair of a hernia comprising: a rounded shape mesh plate 9, 109, which is made of polypropylene; a plug 2, 102 connected to the mesh plate 9, 109; and double ear-piece 7, 107 (col. 2, line 51 to col. 3, line 30 and col. 4, line 10). Agarvall discloses the invention substantially as claimed except for the hydrophilic absorbable collagen barrier anti-adhesion or PTFE and plug includes thorns or hooks on the outer surface.

8. However, Eldridge discloses that using PTFE in a prosthetic device for repair of hernia for the advantage of providing adhesion resistant (Summary of The Invention). Therefore, it would have been obvious to one of ordinary skill in the art to incorporate an anti-adhesion layer of PTFE material into the device Agarwall so that it too would have the same advantage. Further, Eberbach discloses (Fig. 25 and col. 13, lines 60-68) a prosthetic for repairing of a hernia comprising, among other things, needle-like projections 234 may be mold into the exterior surface of the plug to increase the friction contact between the plug and the tissue. Therefore, it would have been obvious to one of ordinary skill in the art to provide the needle-like projections as suggested by Eberbach to the outer surface of the plug of the modified device of Agarwall so that it too would have the same advantage.
9. As to **claim 2**, Agarwall discloses (Fig. 9) the bottom plate opens up at a certain angle to form a plurality of legs, wherein the plurality of legs are attached or connected to each other. It would have been obvious to one of ordinary skill in the art to modify the plurality of legs of Agarwall device to become four legs, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).
10. As to **claim 3**, Agarwall discloses (Figs. 1 and 6) the collar 7, 107 having a concave shape at the proximal location 3, 103 and becomes flat laterally.

11. As to **claims 4 and 5**, Agarwall discloses (Figs. 4 and 9) the collar 7, 107 having a parabolic angling at its vertical section, which is located at the location as shown by reference number 3, 103 and the collar also has a certain angle with the plug or insert or cylindrical body 2, 102.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan V. Nguyen whose telephone number is 571-272-5962. The examiner can normally be reached on M-F: 9:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-49713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/T. V. N./
Examiner, Art Unit 3731

/Todd E Manahan/
Supervisory Patent Examiner, Art Unit 3731